

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

TERA II, LLC, <i>et al.</i>,	:	Case No. 2:19-cv-02221
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	:	
Plaintiffs,	:	Chief Judge Algenon L. Marbley
	:	Magistrate Judge Kimberly A. Jolson
v.	:	
	:	
	:	
RICE DRILLING D, LLC, <i>et al.</i>,	:	
	:	
Defendants.	:	
	:	

OPINION & ORDER

This matter is before the Court on Gulfport Energy Corporation and Gulfport Appalachia, LLC's (hereinafter "Gulfport") Motion to Clarify Order Granting Plaintiffs' Motion to Voluntarily Dismiss Count VI (ECF No. 608). Gulfport's Motion is hereby **GRANTED** and the Court's clarification is set forth below.

I. BACKGROUND

On December 12, 2021, Plaintiffs filed their Second Amended Complaint. (ECF No. 302). The Second Amended Complaint alleges six counts: (I) declaratory judgment; (II) trespass; (III) conversion; (IV) unjust enrichment; (V) fees; and (VI) breach of contract. On February 25, 2022, Gulfport moved for summary judgment on all of Plaintiffs' claims in their Second Amended Complaint. (ECF No. 389). On June 28, 2023, this Court issued an Opinion and Order that granted in part and denied in part Gulfport's motion for summary judgment on Count VI. (ECF No. 490). After that ruling, Plaintiffs' allegation that Gulfport improperly deducted costs prior to calculating royalties was the only remaining claim in Count VI. (*Id.* at PageID 16998-17002).

On December 21, 2023, Gulfport moved for summary judgment on Plaintiffs’ remaining allegation under Count VI—improper royalty deductions on or after May 17, 2021. (ECF No. 557). On January 4, 2024, Plaintiffs responded to Gulfport’s motion by filing a motion to dismiss voluntarily their remaining Count VI claim against Gulfport. (ECF No. 572). On January 12, 2024, this Court issued an Opinion and Order granting Plaintiffs’ motion to dismiss Count VI against Gulfport and denying as moot Gulfport’s motion for summary judgment. (ECF No. 590). On January 19, 2024, Gulfport filed the motion *sub judice* requesting that the Court clarify that the issues within Count VI that the Court granted summary judgment in favor of Defendants were dismissed *with* prejudice and only the issue in Plaintiffs’ motion to dismiss was dismissed *without* prejudice. (ECF No. 608). On January 22, 2024, Plaintiffs filed a response stating they have no objection to the clarification requested by Gulfport. (ECF No. 616).

II. LAW & ANALYSIS

Rule 21 controlled this Court’s January 12, 2024 decision to grant Plaintiffs’ motion to dismiss the remaining issue in Count VI. (*See* ECF No. 590). “[U]nless stated otherwise, severing a claim under Rule 21 means the claim is severed *without prejudice*.” *Baldwin v. Boeing Co.*, No. 1:19-cv-02400, 2021 WL 9036551, at *1 (N.D. Ohio Feb. 19, 2021) (citation omitted) (emphasis added). Conversely, “summary judgment ‘is a final adjudication on the merits’ warranting prejudice, even if a party does not explicitly request dismissal *with prejudice*.” *McNeal v. Foundation Radiology Group, PC*, 2023 WL 3025359, at *3 (E.D. Mich. Apr. 20, 2023) (citations omitted) (emphasis in the original).


In Plaintiffs’ motion to dismiss (ECF No. 572), they did not state whether dismissal of the remaining issue against Gulfport in Count VI would be with or without prejudice. (*See* ECF No. 572). Plaintiffs, however, responded that they have no objection to the clarification requested by

Gulfport. (ECF No. 616). Accordingly, the Court hereby clarifies that its grant of Plaintiffs' motion to dismiss the remaining issue against Gulfport in Count VI (ECF No. 590) dismissed that issue *without* prejudice, while its grants of summary judgment within its June 28, 2023 Order (ECF No. 490) dismissed those issues *with* prejudice.

III. CONCLUSION

For the reasons set forth above, Gulfport's Motion to Clarify Order Granting Plaintiffs' Motion to Voluntarily Dismiss Count VI (ECF No. 608) is **GRANTED**. The Court clarifies that the only portion of Count VI against Gulfport that was dismissed *without* prejudice was Plaintiffs' claim for improper royalty deductions occurring on or after May 17, 2021; the other issues within Count VI that this Court granted summary judgment in favor of Defendants were dismissed *with* prejudice.

IT IS SO ORDERED.


ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: January 22, 2024